NOT PRECEDENTAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 09-3855

James D. Schneller, Heirs & Beneficiaries of Marjorie C. Schneller, by James D. Schneller, Trustee Ad Litem; Estate Of Marjorie Schneller, by and through James D. Schneller, Trustee Ad Litem; Marjorie Zitomer, Executrix of the Estate Of Marjorie Schneller; Estate of George H. Schneller, by and through Personal Representative James D. Schneller

Petitioner

v.

Crozer Chester Medical Center, dba Taylor Hospital And Crozer Keystone Health System; Suburban Pulmonary Medicine And Principals; Daniel Dupont, D.O.; E. Heffelfinger, D.O.; Gerald Meis, D.O.; Gurpreet Kochar, M.D.; Lalitha Gurijala, M.D.; Marjorie Zitomer; G. Richard Schneller; T. Sergeant Pepper, Esquire; Herman Mcgill, M.D.; Hepburn, Wilcox, Hamilton & Putnam, LLP

Respondents

James D. Schneller, Appellant

On Appeal from the United States District Court for the Eastern District of Pennsylvania

(D.C. Civil Action Nos. 2-06-cv-00698 and 2-08-cv-01479)

District Judge: Honorable Lawrence F. Stengel

Submitted Pursuant to Third Circuit LAR 34.1(a)

July 20, 2010

Before: BARRY, AMBRO and COWEN, Circuit Judges

(Opinion filed: July 20, 2010)

Case: 09-3855 Document: 003110222513 Page: 2 Date Filed: 07/20/2010

OPINION

PER CURIAM

Pro se appellant James Schneller appeals from an order of the District Court dismissing his complaint for lack of subject matter jurisdiction. For the following reasons we will affirm the judgment of the District Court.

I.

In February 2006, Schneller filed a pro se action against, inter alia, various health care institutions and providers, his brother, a lawyer, and a law firm, alleging violations of his civil rights, breach of contract, negligence, malpractice, and violations of various state and federal statutes in connection with his mother's death in 2002. See Civil Action E.D. Pa. No. 06-00698. The District Court dismissed the action based on lack of jurisdiction before service was perfected, but we vacated the dismissal on the ground that Schneller should have been given an opportunity to amend his complaint. Schneller et al. v. Crozer Chester Medical Center, 276 F. App'x. 169, 171 (3d Cir. 2008). Rather than amend the

complaint, Schneller initiated a wholly new case with an identical complaint. See Civil Action No. 09-1479. The defendants filed motions to dismiss in the latter case; the District Court construed them as applying to both cases. The District Court granted the defendants' motions and dismissed both complaints for lack of subject matter jurisdiction.

Schneller filed a motion for reconsideration, which the District Court denied by order entered June 26, 2009. On July 27, 2009, Schneller filed a motion for leave to appeal in

forma pauperis. The motion was granted on August 3, 2009, and on September 29, 2009, Schneller filed a notice of appeal.

II.

We have jurisdiction under 28 U.S.C. § 1291.[3] When reviewing an order dismissing a claim for lack of

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[3] Certain of the appellees argue that we do not have jurisdiction over this appeal Because Schneller's notice of appeal was untimely filed. A notice of appeal in a civil case "must be filed with the district clerk within 30 days after the Judgment or order appealed from is entered." Fed. R. App. P. 4(a)(1)(A). This 30-day limit is mandatory and jurisdictional. Bowles v. Russell, 551 U.S. 205, 209-10 (2007). The order Schneller seeks to appeal was entered June 26, 2009. Schneller's motion for leave

subject matter jurisdiction, we exercise plenary review over legal conclusions and review findings of fact for clear error. See White-Squire v. United States Postal Service, 592 F.3d 453, 456 (3d Cir. 2010). We may affirm the District Court on any grounds supported by the record. Kossler v. Crisanti, 564 F.3d 181, 186 (3d Cir. 2009).

III.

Federal courts have limited jurisdiction, and they may only decide cases as authorized by Congress or the Constitution. Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994). To establish diversity jurisdiction under 28 U.S.C. §1332(a), the party asserting jurisdiction must show that there is complete diversity of

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citizenship among the parties and an amount in controversy exceeding $75,000. 28 U.S.C. § 1332(a). The District Court found no basis for diversity jurisdiction because Schneller and eleven of the defendants were residents of Pennsylvania. Id.; see Mennen Co. v. Atl.

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to appeal in forma pauperis, which we construe as a notice of appeal, was filed July 27, 2009, 31 days later. See L.A.R. 3.4 ("The court will deem an application for leave to appeal in forma pauperis . . . to be a notice of appeal if no formal notice has been filed."). However, Schneller's appeal was timely filed because the thirtieth day fell on a Sunday, and Schneller's notice of appeal was filed on Monday, the next business day. See Fed. R. App. P. 26(a)(1)(3).

Mut. Ins. Co., 147 F.3d 287, 290 (3d Cir. 1998) ("[J]urisdiction [under § 1332] is lacking if any plaintiff and any defendant are citizens of the same state."). Schneller has provided no argument or evidence to suggest otherwise. See Packard v. Provident Nat. Bank, 994 F.2d 1039, 1045 (3d Cir. 1993) ("The person asserting jurisdiction bears the burden of showing that the case is properly before the court at all stages of the litigation."). Accordingly, we agree with the District Court that it lacked diversity jurisdiction.

We also agree with the District Court that the Assisted Suicide Funding Restriction Act of 1997 (the "Act"), 42 U.S.C. § 14401, et seq., does not provide a basis for federal question jurisdiction under 28 U.S.C. § 1331. Federal question jurisdiction arises where federal law creates the cause of action, or where the complaint, on its face, poses a federal question. Club Comanche, Inc., v. Gov't of Virgin Islands, 278 F.3d 250, 259 (3d Cir. 2002). "The question whether a statute creates a cause of action, either expressly or by implication, is basically a matter of statutory construction." Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 15 (1979). Thus, "what must ultimately be determined is whether Congress intended to create the private remedy asserted." Id. at 15-16. The stated purpose of the Act is "to continue current Federal policy by providing explicitly that federal funds may not be used to pay for items and services (including

assistance) the purpose of which is to cause (or assist in causing) the suicide, euthanasia, or mercy killing of any individual." 42 U.S.C. § 14401(b). Schneller claims that certain of the appellees misapplied funds appropriated by Congress, in violation of the Act, for the purpose of assisting in causing the death of his mother by euthanasia, mercy killing and assisted suicide. Even if Schneller's claims had a basis in fact, there is nothing in the structure or language of the Act "either expressly or by implication," that shows any intent by Congress to establish a private cause of action. Transamerica Mortgage Advisors, 444 U.S. at 15.

On appeal, Schneller argues that the District Court overlooked as a basis for federal question jurisdiction his claims under the Comprehensive Drug Abuse Prevention and Control Act, 21 U.S.C. § 801, et seq., and claims based on statutes enacted by Congress regarding medical care and nursing care, including Medical Requirements for Skilled Nursing Facilities, 42 C.F.R. § 483.10 et seq.. The Comprehensive Drug Abuse Prevention and Control Act is a statute enforceable only by the Attorney General and, by delegation, the Department of Justice. See 21 U.S.C. § 871. There is no basis for civil liability arising out of this statute. Schneller's claims under 42 C.F.R. §§ 483.10, 483.13, 483.15, and 483.25 do not provide a basis for jurisdiction pursuant to § 1331 because they merely set forth the requirements that a facility must meet in order to qualify to participate in Medicare and Medicaid; they do

not confer a private cause of action. Schneller's argument that his state law claims based on negligence per se somehow support a finding of federal question jurisdiction "in a cumulative respect" is

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unpersuasive and unsupported by law. (Appellant's Brief 14.)

Schneller's civil rights claims under 42 U.S.C. §§ 1983, 1985, and 1986 do contemplate a private cause of action and therefore confer subject matter jurisdiction on the court; however, we agree with the District Court that his § 1983 claim fails because Schneller failed to demonstrate that the alleged violations were committed by a person acting under color of state law. See American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 49-50 (1999) ("To state a claim for relief in an action brought under § 1983, respondents must establish that they were deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under color of state law."). In his brief on appeal, Schneller concedes that "there are no state actors of any clearly defined sort in this action," but continues to press his argument that the private hospital appellees are state actors because they receive public monies and tax benefits, they are subject to state and federal regulation, and their actions are "so entwined with governmental policies . . . as to become state action within the Civil Rights Act." (Appellant's Brief 22.) This argument has been considered and repeatedly rejected by

the Supreme Court in similar cases. See Blum v. Yaretsky, 457 U.S. 991, 1010-11 (1982) (rejecting the argument that state subsidization of a private nursing home facility combined with the state licensing and regulation, converted acts of the homes into state action); Rendell-Baker v. Kohn, 457 U.S. 830, 840 (1982) (finding that a civil rights action by former teachers against a private school failed for lack of "state action," even where "virtually all of the school's income was derived from government funding"); see

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also Hodge v. Paoli Memorial Hospital, 576 F.2d 563 (3d Cir. 1978). We agree with the District Court that Schneller has not demonstrated that "there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself." Jackson v. Metropolitan Edison Co., 419 U.S. 345, 351 (1974).

Schneller argues that the District Court should not have dismissed his complaint without giving him the opportunity to amend the allegations in his § 1983 claims. If a complaint is vulnerable to dismissal for failure to state a claim, a district court must first permit the plaintiff a curative amendment, unless amendment would be "inequitable or futile." Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004). We agree with the District Court's conclusions concerning Schneller's § 1983 claims. Because Schneller could not present additional

information that would transform his allegations into viable claims, we conclude that amendment would be futile and thus will affirm the District Court's judgment as to these claims.

Schneller also argues that the District Court ignored his claims under § 1985 and § 1986. Schneller's § 1985 claim could not survive dismissal because he has not set out sufficient facts to show that a racial or other class-based invidious discriminatory animus lay behind the appellees' alleged actions and that the alleged coconspirators "intended to deprive the victim of a right guaranteed by the Constitution against private impairment." Brown v. Philly Morris Inc., 250 F.3d 789, 805 (3d Cir. 2001). Schneller cannot state a § 1986 claim because a § 1985 violation is a pre-requisite. 42 U.S.C. § 1986. Because

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Schneller's federal claims were all dismissed, the District Court did not abuse its discretion by refusing to exercise supplemental jurisdiction over Schneller's state law claims. See 28 U.S.C. § 1367(c)(3). In any event, even if Schneller otherwise stated a claim under §§ 1983, 1985 or 1986, we agree with the District Court that these claims and the majority of Schneller's state law claims are barred by the governing two-year statute of limitations.[4] See Lake v. Arnold, 232 F.3d 360, 368 (3d

[4] The only claims not barred by the statute of limit-ations were Schneller's breach of contract claims, over which

Cir. 2000) (holding that actions arising under §§ 1983, 1985 and 1986 are subject to the statute of limitations prescribed for personal injury actions in the state in which the relevant events occurred); 42 Pa. C.S.A. § 5524(2), (7) (providing that personal injury, negligence, and intentional tort actions in Pennsylvania must be commenced within two years). [5]

We also agree that 42 Pa. C.S. § 5535 does not provide a basis for jurisdiction in this case because it specifically excludes actions for damages "for injury to the person or for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another." 42 Pa. C.S. § 5535(2).

IV.

Finding unpersuasive any of Schneller's arguments, we will affirm the decision of the District Court. The parties' outstanding motions are denied.

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the District Court declined to exercise supplemental jurisdiction.

[5] Because Schneller's claims were properly dismissed for lack of jurisdiction or failure to state a claim, we disagree with Schneller that it was an abuse of discretion for the District Court to dismiss all claims against all defendants, including Gurpreet Kochar, who had not filed a motion to dismiss. (Appellant's Brief 17.)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 09-3855

James D. Schneller, Heirs & Beneficiaries of Marjorie C. Schneller, by James D. Schneller, Trustee Ad Litem; Estate Of Marjorie Schneller, by and through James D. Schneller, Trustee Ad Litem; Marjorie Zitomer, Executrix of the Estate Of Marjorie Schneller; Estate of George H. Schneller, by and through Personal Representative James D. Schneller

Petitioner

v.

Crozer Chester Medical Center, dba Taylor Hospital And Crozer Keystone Health System; Suburban Pulmonary Medicine And Principals; Daniel Dupont, D.O.; E. Heffelfinger, D.O.; Gerald Meis, D.O.; Gurpreet Kochar, M.D.; Lalitha Gurijala, M.D.; Marjorie Zitomer; G. Richard Schneller; T. Sergeant Pepper, Esquire; Herman Mcgill, M.D.; Hepburn, Wilcox, Hamilton & Putnam, LLP

Respondents

James D. Schneller, Appellant

On Appeal from the United States District Court for the Eastern District of Pennsylvania

(D.C. Civil Action Nos. 2-06-cv-00698 and 2-08-cv-01479)

District Judge: Honorable Lawrence F. Stengel

Submitted Pursuant to Third Circuit LAR 34.1(a)

July 20, 2010

Before: BARRY, AMBRO and COWEN, Circuit Judges

(Opinion filed: July 20, 2010)

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on July 10, 2010. On consideration whereof; it is now hereby

ORDERED and ADJUDGED by this Court that thc judgment of the District Court entered March 19, 2009, be and the same is hereby affirmed. Costs taxed against Appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/ Marcia M. Waldron
Clerk

DATED: 20 July 2010

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES D. SCHNELLER, et al.,

CIVIL ACTION .

Plaintiffs

v.

NO.06-0698

CROZER CHESTER MEDICAL CENTER, et al.,

Defendants

JAMES D. SCHNELLER, et al CIVIL ACTION

Plaintiffs

v.

NO.08-1479

CROZER CHESTER MEDICAL CENTER, et al.,

Defendants

FILED March 19, 2009

ORDER

AND NOW, this 19th day of March, 2009, upon consideration of the defendants' motions to dismiss filed in civil action No. 08-1479 (Documents# 24, 27, 35) the plaintiff's responses thereto (Documents#43, 44, 45), the defendants' reply brief, (Documents#48) and after a status hearing with all parties present, it is hereby ORDERED that the motions are GRANTED in their

entirety.

IT IS FURTHER ORDERED that all remaining motions in these cases are DENIED as moot. The Clerk of Court is directed to mark both of these actions CLOSED for all purposes.

BY THE COURT

_____/s/_____
LAWREMCE F STENGEL, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES D. SCHNELLER, et al., CIVIL ACTION .

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vi.

NO.08-1479

CROZER CHESTER MEDICAL CENTER, et al.,

Defendants

FILED March 19, 2009

MEMORANDUM

STENGEL, J. March 19, 2009

Almost four years after the death of his elderly mother on March 31, 2002, James D. Schneller and

allegedly four other plaintiffs[1] filed *a pro se* action against several defendants[2] whom be claims are legally responsible. The genesis of the case appears to be medical and legal malpractice as a result of the allegedly negligent services rendered to Mr. Schneller's parents during the last few months of their lives. In fact, in the paragraphs introducing ten of the twelve defendants, the plaintiff indicates that 'this action is an action in

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[1] These plaintiffs include: (1) Heirs and beneficiaries of Marjorie C. Schneller, by James D. Schneller, trustee *ad litem;* (2) Estate of Marjorie Schneller, by and through James D. Schneller, trustee *ad litem;* (3) Marjorie Zitomer executrix of the Estate of Marjorie Schneller (Miss Zitomer is Mr. Schneller's sister and also a defendant in this action); and (4) Estate of George H. Schneller, by and through personal representative James D. Schneller The Third Circuit noted: "Schneller filed his complaint *prose.* He also purports to represent other persons and entities. Although Schneller is entitled to represent himself pro *se,* he 'may not appear pro Sc in the cause of another person or entity.'" Schneller et al. v. Crozer Chester Medical Center. et al 276Fcd. Appx. 169, *170 fl.t (3d Cm 2008). Accordingly, 1 will refer to Mr. Schneller as the solo plaintiff.

[2] The twelve defendants include: (1) Crozer Chester Medical Center dba Taylor Hospital and Crozer Keystone Health System; (2) Herman McGill, M.D.; (3) Suburban Pulmonary Medicine; (4) Daniel Dupont, D.O.; (5) E. Heffelfinger, D.O.; (6) Gerald Meis, D.O.;(7) Gurpreet Kochar, M.D.; (8) Lalitha Gurijala, MD.; (9) Marjorie Zitomer (10) Richard Schneller (the plaintiff's brother); (11) T. Sergeant Pepper, Esq. and (12) Hepburn Wilcox, Hamilton and Putnam, LLP.

professional liability and intentional tort against this defendant." See Compl. ¶¶ 5-9, 15-16. The only exceptions are in the paragraphs for his brother and sister. Id. ¶¶ 10, l 1 . I dismissed the case based on lack of jurisdiction before service was perfected. See Schneller et al. v. Crozer Chester Medical Center. et al, No.06-0698, 2006 U.S. Dist. LFXIS 21053, *7-8 (E.D. Pa. April 18, 2006). On appeal, the Third Circuit Court of Appeals vacated the dismissal holding that the plaintiff should have been given an opportunity to amend his complaint. Schneller et al. v. Crozer Chester Medical Center. et al., 276 Fed. Appx. 169, *171 (3d Cir. 2008). It appears that the court's holding prompted the plaintiff to open a new case with the identical complaint, rather than amend the previously filed complaint. See Civil Action No.08-1479

The defendants have filed motions to dismiss the latter case. Because the two cases are identical, I will construe these motions as applying to both cases, grant them in their entirety, and dismiss both cases.
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I. BACKGROUND

In October 2004, Mr. Schneller began a series of actions against these defendants in the Courts of Common Pleas of the Counties of Delaware, Chester, and Montgomery. The cases were dismissed through entries

of judgment of *non pros* for failure to file Certificates of Merit as required by Rule 1042.3 of the Pennsylvania Rules of Civil Procedure. Mr. Schneller unsuccessfully attempted to re-open the cases and/or strike the judgment of *non pros.* He then appealed the cases to the Pennsylvania Superior Court which affirmed without an opinion the entries of judgment. The Pennsylvania Supreme Court denied his petitions for allowance of appeal. Finally, the United States Supreme Court denied the plaintiff's petitions for writ of *certiorari.*

The seventy-eight (78) page complaint contains five-hundred fifty-three (553) paragraphs purporting to provide the basis of the plaintiffs twenty-nine (29) claims:

Count 1A	-	Violation of the Assisted Suicide Funding Restriction Act of 1997
Count 1B	-	Civil Action for Deprivation of Rights
Count 1C	-	Conspiracy to Interfere with Civil Rights Depriving Persons of Rights and Privileges
Count 1D	-	Conspiracy to Interfere with Civil Rights - Obstructing Justice and Intimidating Parties - Battery
Count 1E	-	Neglect to Prevent Deprivation of Rights & Conspiracy for Deprivation of Rights - Failure to Warn
Count 2	-	Breach of Contract
Count 3	-	Breach of Contract
Count 4	-	Fraudulent Inducement of Contracts
Count 5	-	Breach of Confidential Relationship, Fiduciary Relationship and

		Fiduciary Duty
Count 6	-	Wrongful Death
Count 7	-	Survival
Count 8	-	Intentional Tort - Abuse of Power of Attorney
Count 9	-	Intentional Tort Abuse of Advance Health Care Directive
Count 10	-	Negligence Per Se (violation of sixty-five state and federal statutes)
Count 11	-	Battery
Count 12	-	Battery - Lack of Informed Consent
Count 13		Product Liability
Count 14	-	Survival - Negligent and Intentional Infliction of Emotional Distress
Count 15	-	Survival - Conspiracy
Count 16	-	Survival - Punitive Damages
Count 17	-	Professional Negligence - Medical
Count IS	-	Professional Negligence - Attorney
Count 19	-	Slander and Libel
Count 20	-	Fraud and Intentional Misrepresentation
Count 21	-	Conspiracy
Count 22	-	Negligent and Intentional Infliction of Emotional Distress
Count 23	-	Breach of Fiduciary Duty
Count 24	-	Tortious Interference with Present & Prospective Economic Advantage
Count 25	-	Punitive Damages

Mr. Schneller also alleges violations of various Long Term Care Facility regulations, including: 42 C.F.R. § 483.10, 42 C.F.R. § 483.13, 42 C.F.R. § 483.15, and 42 C.F.R. § 483.25.[3] See Compl. ¶ 24.

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[3] These provisions "contain the requirements that an institution must meet in order to qualify to participate as

There are three (3) groups of related defendants,[4] each of which have filed a motion to dismiss with substantially similar arguments. Accordingly, I will address these motions in concert.

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II. STANDARD FOR A MOTION TO DISMISS

A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted examines the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41,45-46(1957). The factual allegations must be sufficient to make the claim for relief more than just speculative. Bell Atlantic Corp. v. Twombly, 550 U.S. 544,555(2007). In determining whether to grant a motion to dismiss, a federal court must construe the complaint liberally, accept all factual allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff Id.; see also D.P. Enters. v. Bucks

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a [skilled nursing facility] in the Medicare program, and as a nursing facility in the Medicaid program. They serve as the basis for survey activities for the purpose of determining whether a facility meets the requirements for participation in Medicare and Medicaid." 42 C.F.R. § 483.1(b). These regulations do not confer a private right of action. Accordingly, they provide no basis for jurisdiction pursuant to 28 U.S.C. § 1331.

County Cmty. Coll., 725 F.2d 943, 944 (3d Cir. 1984).

The Federal Rules of Civil Procedure do not require a plaintiff to plead in detail all of the facts upon which he bases his claim. Conley, 355 U.S. at 47. Rather, the Rules require a "short and plain statement" of the claim that will give the defendant fair notice of the plaintiffs claim and the grounds upon which it rests. Id. The "complaint must allege facts suggestive of [the proscribed] conduct." Twombly, 550 U.S. at 555. Neither "bald assertions" nor "vague and conclusory allegations" are accepted as true. See Morse v. Lower Merion School Dist., 132 F.3d 902,906 (3d Cir. 1997); Sterlin2 v. Southeastern Pennsylvania Transp. Auth., 897 F. Supp. 893 (E.D. Pa. 1995). The claim must contain enough factual matters to suggest the required elements of the claim or to "raise a reasonable expectation that discovery will reveal evidence of those elements. Phillips V

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Countv of Allegheny, 515 F.3d224, 234 (3d Cir. 2008) (quoting Twombly, 550 U.S. at 555).

A case maybe also dismissed under Rules 12(b)(1) and 12(h)(3) of the Federal Rules of Civil Procedure "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter...." FED.R.CIV.P. 12(h)(3). Alternatively, a court

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[4] An exception to this is defendant Kochar who has not filed a motion to dismiss.

choosing not to grant a motion to dismiss for lack of subject matter jurisdiction may, under Rule 12(e), grant a motion for a more definitive statement if "a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading " FED.R.CIV.P. 12(e).

Moreover, courts must liberally construe *pro se* complaints and "apply the applicable law, irrespective of whether [the] litigant has mentioned it by name." Higgins v Beyer, 293 F.sd 683, 688 (3d Cir. 2002). Thus, a plaintiffs complaint, however inartfully pleaded, must be held to a less stringent standard than a formal pleading drafted by an attorney. Estelle v. Gamble, 429 U.S. 97, 106 (1976).

III. DISCUSSION

The defendants argue that the case should be dismissed because this court does not have subject matter jurisdiction. Federal courts are courts of limited jurisdiction, and they may only decide cases as authorized by Congress or the Constitution. District courts have subject matter jurisdiction over federal questions pursuant to 28 U.S.C. § 1331, in which
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Congress grants courts "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

Federal courts also have subject matter jurisdiction over cases where there is complete diversity of citizenship among the parties and the amount in controversy "exceeds the sum or value of $75,000, exclusive of interest and costs" pursuant to 28 U.S.C. § 1332(a).[5] The requirement of complete diversity means that "jurisdiction is lacking if any plaintiff and any defendant are citizens of the same state." Menan Co. v. Atl. Mut. Ins. Co., 147 F.3d 287, 290 (3d Cir. 1998) (citing Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267,2 L. Ed. 435 (1806)).

When a motion to dismiss for lack of subject matter jurisdiction is before a court, "the person asserting jurisdiction bears the burden of showing that the case is properly before the court at all stages of litigation." Packard v. Provident Nat'l Bank, 994 F.2d 1039, 1045 (3d Cir. 1993). This burden is applicable to cases based on diversity jurisdiction as well, and in such cases a plaintiff must demonstrate complete diversity

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[5] Title 28 U.S.C. § 1332(a) provides: The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between: (1) citizens of different states' (2) citizens of a state and citizens or subjects of a foreign state; (3) citizens of different states and in which citizens or subjects of a foreign state are additional parties; and (4) a foreign state as plaintiff and citizens of a state or of different states.

between the parties and that the amount in controversy requirement has been met. Quaker State Dyeing & Finishing Co.. Inc.. v. ITT Terryphone Corp., 461 F.2d 1140, 1143 (3d

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Cir. 1972) (citing McSparran v. Weist, 402 F.2d 867, 875 (3d Cir. 1968)).

Here, the plaintiff and eleven defendants are residents of Pennsylvania. There is clearly no diversity of citizenship. Thus, jurisdiction cannot be based on 28 U.S.C. §1332. The defendants, however, also argue that the complaint fails to present a federal question sufficient to confer jurisdiction. Federal question jurisdiction exists in one of two circumstances: (1) where federal law creates the cause of action; or (2) where the complaint poses a substantial federal question. Sodi v. Discover Financial Services, 2004 U.S. Dist. LEXIS 24133, *8 (E.D. Pa. 2004). Here, the plaintiff's alleged bases for federal question jurisdiction fall into two categories: (1) alleged violations of federal statutes and regulations; and (2) alleged civil rights violations.

Mr. Schneller cites several federal statutes and regulations throughout his complaint. of the twenty-nine counts contained in the complaint, however, only five counts attempt to set forth federal causes of action. The first count alleges a violation of the Assisted Suicide Funding Restriction Act of 1997,42 U.S.C. § 14401, *et*

seq. See Compl. ¶91 95-107. The defendants argue that this Act does not create a private right of action, and thus cannot provide the basis for jurisdiction. I agree.

If Congress intends to create a private cause of action under a federal statute, the federal courts should find a private cause of action under the given statute. Transamerica Mortgage Advisors Inc. v. Lewis, 444 U.S. 11,15(1979). Congress' intent is determined by examining "the language or structure of a statute or the circumstances of

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its enactment." Id. "[W]hether a statute creates a cause of action, either expressly or by implication, is basically a matter of statutory construction." Id. If the language of the statute expressly gives a remedy then courts should be wary when they are requested to add an additional remedy that is not expressly provided for in the statute. Id.

The structure and language of this Act do not show any intent by Congress to establish a private cause of action. The purpose of the Act is "to continue current federal policy by providing explicitly that federal funds may not be used to pay for items and services (including assistance) the purpose of which is to cause (or assist in causing) the suicide, euthanasia, or mercy killing of any individual." 42 U.S.C. § 14401(b). Mr. Schneller claims that jurisdiction is proper under this Act because many of the defendants applied funds appropriated by

Congress for the purpose of paying for the provision of health care services, federal fluids under certain grant programs including Medicare and Medicaid, and federal advocacy grants, to pay for, provide and contribute to payment or coverage, for health care items and service furnished for the purpose of causing, and for the purpose of assisting in causing, the death of Marjorie C. Schneller, by euthanasia, mercy killing and assisted suicide. See Compl. ¶ 17. Mr. Schneller's assertion is contrary to law.

The rationale for the enactment of this statute is to prevent federal funds from being used for the criminal and unlawful purpose of assisted suicide. See 42 U.S.C.A. §14401 (a)(2). There have never been any criminal charges in connection with the care

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and treatment of Marjorie Schneller, and the claims that the defendants engaged in some type of mercy killing are unfounded. Further, no court has found that Title 42 U.S.C. §14401, *et seq.*, creates a private cause of action. Thus, the Assisted Suicide Funding Restriction Act cannot form the basis of subject matter jurisdiction.

The next four counts in the complaint allege the deprivation of civil rights pursuant to 42 U.S.C. §§ 1983, 1985, and 1986. Because they contemplate a private cause of . action, these statutes provide subject matter jurisdiction to the court. Counts lB, 1C, lD, and lE set forth the plaintiffs civil rights claims against the

defendants for alleged violations of his mother's rights guaranteed by the Fourteenth Amendment to the United States Constitution. Count lB contains allegations that the defendants deprived Mrs. Schneller of life, liberty, and property by enforcing her advanced health care directive over Mr. Schneller's objection and causing her death. See Compl. ¶¶ 108-129. Count IC claims that the defendants conspired to deprive Mrs. Schneller of rights and privileges including "freedom of speech, freedom to write and communicate, right to locomotion, family interaction, rights to legal representation, to meaningful family visits, and right to choose her daily regimen and health program." See Compl. ¶¶ 130-155. Count lD alleges that the defendants "conspired for the purpose of impeding, hindering, obstructing, and defeating the due course of justice enjoyed by citizens, with the intent to deny plaintiffs the equal protection of the laws," and that these acts constituted causes of action for obstruction of justice, criminal assault, and criminal maiming. See Compl. ¶¶156-173.

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Finally, Count IE alleges that the defendants, "having knowledge that any and all of the wrongs conspired to be done, as enumerated in this complaint, were about to be committed, and having power to prevent or aid in preventing the commission of the same neglected or refused so to do." Compl. ¶¶ 174-182.

The Fourteenth Amendment to the U.S.

Constitution provides that 'no State shall...deprive any person of life, liberty, or property, without due process of law..." US Const., Amend. 14, § 1 . The protections of the Fourteenth Amendment do not extend to private conduct abridging individual rights, no matter how unfair that conduct may be. National Collegiate Ath. Ass'n v. Tarkanian, 488 U.S. 179 (1988). It is the duty of this court to ensure that the Fourteenth Amendment is invoked only when it can be said that the State is responsible for the specific conduct of which the plaintiff complains. Brentwood Acad. v. Tennessee Secondarv Sch. Athletic Ass'n, 531 U.S. 288, 296 (2001); Edmonson v. Leesville Concrete Co., 500 U.S. 614, 632 (1991); Blum v. Yaretskv, 457 U.S. 991(1982). If a defendant's conduct satisfies the state-action requirement of the Fourteenth Amendment, the conduct also constitutes action "under color of state law" for Section 1983 purposes. Brentwood Acad., 53l U.S. at 295 (citing Lugar v. Edmondson Oil Co., 457 U.S. 922(1982)).

Title 42 U.S.C. §1983 authorizes redress for violations of constitutional rights and provides, in pertinent part, that:

> Every person who, under color of any statute, ordinance regulation, custom, or usage, of any State or Territory,

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> subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any

> rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. §1983. By its terms, Section 1983 does not create a substantive right; it merely provides a method for vindicating federal rights conferred by the United States Constitution and the federal statutes that it describes. Baker v McCollan, 4A U.S. 137 (1979). In order to establish a claim under Section 1983, a plaintiff must demonstrate (1) a violation of a right secured by the Constitution and the laws of the United States and that (2) the alleged deprivation was committed by a person acting under color of state law. American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40 (1999).

Here, Mr. Schneller fails to satisfy these requirements. Although a private party may cause a deprivation of a constitutional right, it is subjected to liability under Section 1983 only when it does sounder color of law. FIagg Bros. Inc. *v.* Brooks, 436 U.S. 149, 156(1978). Section 1983 excludes from its reach "merely private conduct," no matter how discriminatory or wrongful. American Mfrs. Mut. Ins. Co., 526 U.S. at 50. The actions alleged here were not performed under color of state law, and the defendants are not and cannot be considered state actors.

Mr. Schneller argues, however, that the defendants "operated under a state-created system permitting

private parties to substitute their judgment for that of a state official and invoked state power." See Compl. Count 1B. He also alleges that some of the

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defendants receive federal funds. Id. These allegations do not establish that the defendants were acting "under color of law" or were state actors. The traditional exclusive governmental function test requires that a private entity exercise powers traditionally and exclusively reserved to the State, such as holding an election or eminent domain. Wolotskv v. Hulin, 960 F.2d 1331, 1335(6th Cir. 1992). The provision of hospital services is not a traditional public function exclusively reserved for the State. Shannon v. Shannon, 965 F.2d 542, 547 (7th Cir. 1992) (hospital care is not an exclusive prerogative of the State).

When analyzing the exclusive government function test, the Supreme Court has held that the receipt of public funds and the performance of a function serving the public, alone, are not enough to make a private entity a state actor. Rendell-Baker v. Kohn, 457 U.S. 830, 840(1982); Black. et al. v. Indiana School District, 985 F.2d 707,710-Il (3d Cir. 1993) (a school bus driver is not performing an exclusive government function, even though paid by the state and performing a service for the public). The fact that hospitals and nursing homes may be extensively regulated and may receive financial support from the government through

Medicaid and Medicare does not make them state actors . 457 U.S. *at* 1011. In Blum, the Supreme Court flatly rejected the argument that the State's payment of more than 90% of nursing home patients' medical expenses and the licensing of nursing homes does not create a symbiotic relationship between the state and nursing homes. Additionally, the vast majority of Courts of Appeals have determined that

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the recipient of federal construction funding, Medicare and Medicaid funds, and the existence of tax exemption, as well as state licensing requirements for non-profit hospitals, do not constitute state action under 42 U.S.C. § l983. See Hodge v. Paoli Memorial Hospital, 576 F.2d 563 (3d Cir. 1978) (citing Schlein v. Milford Hospital Inc., 561 F.2d 427 (2d Cir. 1977); Greco v. Orange Memorial Hospital Corporation, 513 F.2d 873 (5th Cir.), cert. denied, 423 U.S. 1000(1975); Jackson v. Norton-Children's Hospitals. Inc., 487 F.2d 502(6th Cm 1973), cert. denied, 416 U.S. 1000(1974); Doe v. Bellin Memorial Hospital, 479 F.2d 756 (7th Cir. 1973); Briscoe v. Bock, 540 F.2d 392 (8th Cir. 1976); Watkins v. Mercy Medical Center, 520 F.2d 894(9th Cir. 1975); Ward St. Anthony Hospital, 476 F.2d 671(10th Cir. 1973)).

Accordingly, the receipt of federal finding is not determinative of state action. Private entities are not transformed into state actors by the simple provision of

funds. Because Mr. Schneller cannot establish state action, he cannot establish a cause of action under 42 U.S.C. § 1983 or related statutes, which provide a necessary conduit through which the plaintiff might recover for alleged federal rights violations perpetrated against him. Accordingly, I will dismiss Counts IB, IC, ID, and IE.

If these federal claims were properly before me, they would still fail as untimely. Although Rule 12(b) does not explicitly permit the assertion of a statute of limitations defense by a motion to dismiss, the so-called "Third Circuit Rule" allows a defendant to assert a limitations defense in a Rule 12(b)(6) motion "if 'the time alleged in the

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statement of a claim shows that the cause of action has not been brought within the statute of limitations.'" Zankel v. Temple University, 245 Fed. Appx. 196, 198 (3d Cir. 2007) (citing Robins v. Johnson, 313 F.3d 128, 135 (3d Cir. 2002)). Because these federal statutes do not set forth a specific statute of limitations, the claims are subject to Pennsylvania's two-year statute of limitations. City of Rancho Palos Verdes v. Abrams, 544 U.S. 113, 124(2005) (where a plaintiff relies upon federal statutes in asserting a claim, and those statutes do not contain a specific provision regarding the time within which an action maybe brought, federal courts apply the statute of limitations governing suits for personal injury in which

the action arises); Wilson v. Garcia, 471 U.S. 265, 275 (1985); see also Lake v. Arnold, 232 F.3d 360, 368 (3d Cir. 2000) (actions arising under Sections 1983,1985 and 1986 are subject to the statute of limitations prescribed for personal-injury actions in the state in which the relevant events occurred). Pennsylvania's personal injury statute of limitations is two (2) years. Vojtasek v. Diocese of Allentown, 916 A.2d 637,640 (Pa. Super. 2006); 42 Pa.C.S.A. § 5524(2). The death of Marjorie Schneller is a discreet and identifiable event, and the statute of limitations on any claims arising from her death or any of the alleged events that precipitated her death, began to arise on March 31, 2002. This action was commenced on February 16, 2006, almost four (4) years later, and is thus untimely by two (2) years. Accordingly, Mr. Schneller's federal claims would be time-barred if they were properly before me.

Finally, the plaintiff claims that jurisdiction exists pursuant to 42 Pa.C.S. § 5535.

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Title 42 Pa.C.S. § 5535(1) provides: "If a civil action or proceeding is timely commenced and is terminated, a party, or his successor in interest, may, notwithstanding any other provision of this subchapter, commence a new action or proceeding upon the same cause of action within one year after the termination and any other party may interpose any defense or claim which might have been interposed In the original action or

proceeding." The plaintiff claims that this statute supplies jurisdiction because his prior civil action docketed at 06-cv-0698 was terminated by the court, and a new action was timely commenced. Mr. Schneller's reliance on this statute is misplaced. Title 42 Pa.C.S §5535(2) specifically provides that "paragraph (1) does not apply to an action to recover damages for injury to the person or for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another." Accordingly, in this wrongful death action, jurisdiction cannot be based on 42 Pa.C.S. § 5535.

Mr. Schneller also claims that the court has supplemental jurisdiction over his remaining state law claims pursuant to 28 U.S.C. § 1367(a), which provides:

> [I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they forrn pad of the same case or controversy under Article Ill of the titited States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

The state law claims ~ this complaint substantially predominate over the § 1983 claims. See 28 U.S.C. § 1367(c)(2). The federal claims over which the court had

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jurisdiction will be dismissed. 28 U.S.C. § 1367(c)([3]). Accordingly, I decline to exercise supplemental jurisdiction over the state jaw claims in this case.

I note that if the state law tort claims were properly before me, however, they would still be dismissed as untimely. The plaintiff and eleven of the twelve defendants are residents of Pennsylvania, and all relevant events in this case arose in Pennsylvania. It is well established that a federal court shall apply Pennsylvania substantive law and federal procedural rules to the resolution of state Jaw claims. See Erie Railroad Company v. Tomkins, 304 U.S. 64 (1938)). Accordingly, Pennsylvania law governs the disposition of the plaintiffs state law tort claims. In Pennsylvania, the applicable two-year statute of limitations provides that: "The following actions and proceedings must be commenced within two years:

(1) An action for assault, battery, false imprisonment, false arrest, malicious prosecution or malicious abuse of process.

(2) An action to recover damages for injuries to the person or for the death of an individual caused by the wrongful act or neglect or *unlawful violence or negligence* of another

(3) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof. . .

(4) Any other action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional, or otherwise tortious conductor any other

> action or proceeding sounding *in* trespass, *including* deceit *or fraud,* except an action *or* proceeding subject to another limitation specified in *this* subchapter.

Title 42 Pa. C.S.A. § 5524. Thus, under § 5524(2), because the case was filed almost

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four (4) years after Mrs. Schneller's death, the plaintiffs state law claims arising from her death or the care she received in the months preceding her death would also be time barred.

In conclusion, while the plaintiff attempts to bring federal claims in combination with his predominant state law claims, the federal claims will be dismissed for lack of subject matter jurisdiction and for failure to state a claim. In the alternative, if the federal claims were properly before me, they would be dismissed as untimely. Finally, I decline to exercise supplemental jurisdiction over the state law claims, most of which are also untimely.[6]

An appropriate Order follows.

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[6] Any breach of contract claims in this complaint would be timely because under Pennsylvania law, an action for breach of contract is subject to a four (4) year statute of limitations. Pa.C.S.A. § 5525. Mrs. Schneller died on March 31, 2002, and the earlier of these two cases was filed on February 16,2006, over a month within the statute of limitations. Because I decline to exercise supplemental jurisdiction, this point is moot.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES D. SCHNELLER, et al.,

CIVIL ACTION .

Plaintiffs

v.

NO.06-0698

CROZER CHESTER MEDICAL CENTER, et al.,

Defendants

JAMES D. SCHNELLER, et al

CIVIL ACTION

Plaintiffs

vii.

NO.08-1479

CROZER CHESTER MEDICAL CENTER, et al.,

Defendants

FILED JUNE 26, 2009

ORDER

AND NOW, this 25 day of June, 2009, upon consideration of the plaintiff's motion for reconsideration filed both in Civil Action No. 08-1479 (Document #72) and in Civil Action No.06-0698 (Document #39), and the

defendants' responses thereto, it is hereby ORDERED that the motion is DENIED.[1]

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[1] On March 19,2009,1 dismissed the above captioned cases. The plaintiff filed a motion for reconsideration to which the defendants responded. Granting a motion for reconsideration is appropriate "if the party seeking reconsideration shows at least one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion . . .; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." Max's Seafood Cafe ex rel. Lou-Ann. Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999) (citing N. River Ins. Co. v. CIGNA Reins. Co., 52 P.3d 11941 1218 (3d Cir. 1995)); see also Cont'l Cas. Co. v. Diversified Indus.. Inc., 884 F. Supp. 937.943 (E.D. Pa. 1995) (because federal courts have a strong interest in the finality of judgments, motions for reconsideration should be granted sparingly). The plaintiff has shown none of those grounds. There was no intervening change in the controlling law, no new evidence presented, or no clear error of law or fact in my previous Memorandum and Order dismissing the actions. Accordingly, I will deny the motion.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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viii.

NO.08-1479

CROZER CHESTER MEDICAL CENTER, et al.,

Defendants

FILED JUNE 26, 2009

ORDER

AND NOW, this 25 day of June, 2009, upon consideration of the plaintiffs motion for leave to reply to the defendants' responses with a motion to dismiss non-diversity defendants and for remand filed in Civil Action No.08-1479 (Document

#77), it is hereby ORDERED that the motion is DENIED.[1]

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[1] On April 3, 2009, the plaintiff filed a motion for reconsideration of the dismissal of the above-captioned cases. Responses to that motion were due by April 20 2009. See local Rules 7.1 (c) and 8(e). The defendants filed untimely responses on April23, 2009, April24, 2009, and May 8 2009. At least twenty-eight days later, the plaintiff filed this motion for leave to reply to those responses. After review of these papers, I find that nothing in the motion for reconsideration, the defendants' untimely responses, and the plaintiffs untimely request for leave warrant reconsideration of the dismissal of these actions. Accordingly, 1 will deny the plaintiffs motion for leave to reply. Furthermore, waiting until after the dismissal of the actions to motion for the dismissal of the non-diversity defendants and for remand is inappropriate.